

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

PETER J. MILLER, an individual,
CLIFFORD HOYT, an individual, and
CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.,
a Delaware corporation,

Plaintiffs,

v.

PATRICK TREADO, an individual, and
CHEMIMAGE CORP., a Delaware
corporation,

Defendants.

Civil Action No. 05-10367-RWZ

**PLAINTIFF'S MOTION TO ENJOIN DEFENDANTS
FROM CONTINUING WITH THE REISSUE APPLICATION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the plaintiffs, Peter J. Miller, Clifford Hoyt, and Cambridge Research and Instrumentation, Inc., hereby move this Court to enjoin defendants, Patrick Treado and ChemImage Corp., from proceeding with Reissue Application Ser. No. 11/103,423 ('the reissue proceeding") recently filed for U.S. Pat. No. 6,734,962 ("the '962 patent").

Specifically, plaintiffs respectfully request the Court to order defendants to petition the Patent and Trademark Office ("PTO") under 37 CFR §1.182 to withdraw and/or stay the reissue application. Furthermore, plaintiffs also respectfully request that any such order from the Court granting such relief require that it be submitted by defendants to the PTO with such petition and/or request.

A proposed order is attached to this motion.

The grounds for this motion are:

1. Plaintiffs have shown a reasonable likelihood of success in proving plaintiffs' co-inventorship of the '962 patent by presenting a document which both predates (by several years) the filing of the application which became the '962 patent, and discloses all of the elements in Claim 1 of the '962 patent;
2. Plaintiffs will suffer irreparable harm, i.e., the complete extinguishing of legal rights as co-inventors, if in the reissue proceeding defendants succeed in their intention of canceling from the claims of the '962 patent all subject matter co-invented by plaintiffs;
3. The balance of hardships tips in plaintiffs' favor, as the harm in staying defendants' reissue proceeding is negligible, since reissue proceedings are normally stayed by the PTO when there is a concurrent litigation;
4. The public interest favors determining the true inventors of the '962 patent in the present Court proceedings before proceeding with the reissue application, because, if plaintiffs prevail, the reissue application would have been invalid *ab initio*.

In support of this motion, plaintiffs submit the accompanying memorandum.

Respectfully submitted,

**PETER J. MILLER, CLIFFORD HOYT,
and CAMBRIDGE RESEARCH AND
INSTRUMENTATION, INC.,**

By their attorneys:

/s/ Teodor Holmberg
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Dated: June 23, 2005

LOCAL RULE 7.1(A)(2) CERTIFICATION

Counsel for Plaintiffs conferred with Defense Counsel Anthony Fitzpatrick on June 23, 2005, in a good faith attempt to resolve or narrow the issue presented in this motion. Defense Counsel Fitzpatrick opposed the motion.

/s/ Teodor Holmberg
Teodor J. Holmberg (BBO# 634708)

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[PROPOSED] ORDER

Defendants ChemImage and Patrick Treado are hereby ordered to:

- a) file a petition under 37 CFR §1.182 with the U.S. Patent and Trademark Office requesting the stay and/or withdrawal of defendants' U.S. Reissue Patent Application Serial No. 11/103,423, said petition to be filed within five (5) days of entry of this Order; and
- b) attach this Order to said petition under 37 CFR §1.182.

Dated: _____, 2005

RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE